STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE NOS. 19-85 & 20-85:

MONTANA PUBLIC EMPLOYEES ASSOCIATION,

Complainant and Defendant,

- vs -

CITY OF GREAT FALLS,

Defendant and Complainant.

FINAL ORDER

* *

The Findings of Fact, Conclusions of Law and Recommended Order were issued by Linda Skaar on July 28, 1986.

Exceptions to the Findings of Fact, Conclusions of Law and Recommended Order were filed by David V. Gliko, attorney for City of Great Falls on August 13, 1986.

After reviewing the record and considering the briefs, the Board orders as follows:

1. IT IS ORDERED that the Exceptions to the Findings of Fact, Conclusions of Law and Recommended Order are hereby denied.

2. IT IS ORDERED that this Board therefore adopts the Findings of Fact, Conclusions of Law and Recommended Order of Hearing Examiner Linda Skaar as the Final Order of this Board.

DATED this 29th day of October, 1986.

BOARD OF PERSONNEL APPEALS

By Alan L. Joscelyn
Alan L. Joscelyn
Chairman

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IN THE MATTER OF UNFAIR LABOR PRACTICE NOS. 19-85 and 20-85:

MONTANA PUBLIC EMPLOYEES ASSOCIATION,

Complainant,

vs.

CITY OF GREAT FALLS,

Defendant.

and

CITY OF GREAT FALLS,

Complainant,

vs.

MONTANA PUBLIC EMPLOYEES ASSOCIATION,

Defendant.

FINDINGS OF FACT; CONCLUSIONS OF LAW; RECOMMENDED ORDER

* * * * * * * * * * * *

On September 16, 1985, the Montana Public Employees Association filed an Unfair Labor Practice charge with this Board alleging that the City of Great Falls violated the provisions of 39-31-401(5) MCA by bargaining in bad faith with the Montana Public Employees Association. In their charge, the MPEA asserted that during and subsequent to negotiations the City made certain economic commitments to them; the settlement and subsequent ratification was made on the basis of these commitments but after ratification it became apparent that the City had lied to them regarding those commitments. The union further charged that the City exhibited bad faith by taking a predetermined and inflexible position on economic matters and by failing to designate representatives with sufficient authority to bargain meaningfully.

On October 1, 1985, the City of Great Falls charged the Montana Public Employees Association with bargaining in bad

faith in violation of 39-31-402(2) because it refused to execute the agreement following ratification by the union membership.

For the purpose of hearing and decision, Unfair Labor Practice charges #19-85 and #20-85 were combined. The hearing was held on March 7, 1986 under the authority of Section 39-31-405 MCA and in accordance with the Administrative Procedures Act (Title 2, Chapter 4, MCA).

The Montana Public Employees Association was represented by David Stitelar and the City of Great Falls was represented by David V. Gliko. Linda Skaar was hearing examiner.

FINDINGS OF FACT

1. Negotiations for a second contract between the MPEA bargaining unit and the City of Great Falls began on June 21, 1985. Negotiations for the first contract (1984-85) were long and difficult and had concluded not many months before negotiations for the second contract began.

Members of the City bargaining team were spokesperson Cheryl Bruskotter, Director of Community Services, Nathan Tubergen, Director of Finance and Richard Gercken, Librarian. Linda Merriman, Personnel Technician for the City attended the sessions.

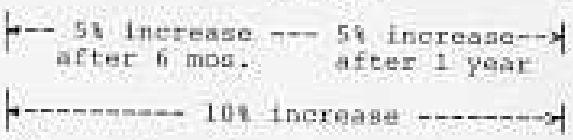
Members of the MPEA bargaining team were spokesperson Jim Adams, Director of Field Services for MPEA and unit members Judy Hardinger and Rosie Lewis. Adams is a seasoned negotiator having bargained hundreds of contracts for MPEA in the last 10 years.

Individual members of the two teams were friendly toward one another in the bargaining sessions. The sessions themselves were relatively brief with the City bargaining team meeting with City Manager Al Johnson before and after

each session. It appeared to the Union that the City team had to discuss every counter proposal with the City Manager. Johnson testified that the City Commission set guidelines which he conveyed to the team and he "never presumed to have the final say in regard to budgetary items in negotiations."

2. The 1984-85 MPEA contract contained the same pay plan (or matrix) which had been in use in the City of Great Falls for several years. Negotiated into the MPEA contract, the pay plan also continued to be used for the nonunion employees. The pay plan follows:

Step A	Step B	Step C	Step M
6 months (probationary)	1 year 5% higher than A	15% range at annual 2% increments	Merit



Under this plan, an employee's pay increased 10% in the first 18 months of his employment.

On June 21, 1985, the City's initial proposal was for "take aways" from the 1984-85 contract plus a freeze on the pay matrix. In other words, new employees would not move from Step A to Step B after completing the probationary period nor would more senior employees move into the Step C pay range. There would be no merit pay.

The union made no proposal at the first meeting but advanced a counter-proposal on June 28, 1985. It proposed to trade the City's language items for the Union's economic package: 70¢ per hour, fully paid health insurance and elimination of a job classification grade. The City countered with a 1% salary increase but continued to insist on no movement on the pay matrix. The teams worked on language modifications at this and the next two sessions.

3. The third and fourth bargaining sessions occurred on July 12 and 26. During the first of these meetings the City team had been given authority by the City Commission to raise the offer to 1½, however, City offers continued to provide for no movement on the pay matrix. This eventually led the union to counter propose elimination of the "C" step on the pay matrix. Under this proposal (and the one eventually agreed upon) employees, after finishing the probationary period, would move to step "B" and there would be no further movement.

Before the union made the proposal eliminating a step, a number of things were discussed. The City had settled with the Teamster unit for a 2% increase. The Teamster contract contained a "me-too" clause and the City team asserted that 2% was a cap beyond which it could not move. In pursuing his argument for a cents-per-hour increase equivalent to the Teamster settlement but exceeding 2%, Adams told the City team that the Teamsters' had indicated to him that they would not enforce the "me-too" clause because the wages of the MPEA unit were so low. The City was not interested in looking into this further.

The union bargaining team felt it was losing ground with every proposal made by the City. They believed they were being punished for organizing. The nature of the City offers led them to be concerned about losing ground compared to the nonunion people who historically had shared the same pay matrix. Adams started asking questions. Initially, (July 12) he questioned Finance Director Tubergen about what kind of wage increase would be given to the nonunion employees and were the nonunion employees going to get a better deal? Tubergen and Adams both testified that he

(Tubergen) replied that nothing he knew of was being considered.

Ms. Bruskotter's testimony contradicts that of Tubergen and Adams. When asked, "Was any direct question asked of you--by Mr. Adams--or anyone else on your bargaining team, whether or not--in that session--the nonunion employees would receive more than the unit members?" Ms. Bruskotter replied, "there was not a direct question asked." (Tape 3) Although she agrees that Adams expressed concern with the nonunion employees being treated more favorably than the union employees, she said the City team acknowledged his concern but did not respond.

The July 12, session ended after the union made a proposal which the City team agreed to take back to their "superiors." This union offer eliminated step "C" of the pay plan.

4. At the bargaining session held on July 26, 1985, the City team reported that the MPEA proposal was not acceptable. As a counter proposal the City offered 2% on the pay plan + 1% performance pay to be paid in a lump sum in December (previously merit pay had been folded into the base). This was about an 11¢ per hour increase. This offer was made on the authority of the City Manager, who, Ms. Bruskotter believed, had spoken to the City Commission. Adams response to this offer was anger--he told the City team that they (the unit) felt like they were being punished for organizing. Adams again brought up the subject of the nonunion employees and asked what wage increase they were going to get and whether they were going to be treated better than the MPEA employees. He was assured that no one

would get more and that those on the pay matrix would continue on the matrix.[1]

The July 26 meeting ended when the MPHA bargaining team agreed to take the City proposal to the unit without recommendation.

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[1]On this point, testimony is conflicting. Ms. Bruskotter remembers discussing the nonunion employees at this meeting but asserts that no information was asked for and none was given. She testified, "I think we talked some about historics, that historically they had been the same. We didn't have any authorization to talk about what would happen with the nonunion people because we weren't commissioned with that responsibility." "Nor did I personally have any knowledge of what would happen to the nonunion people." (Tape 4) Ms. Bruskotter also testified that the Union did not ask any direct questions about whether the nonunion employees would receive a bigger wage increase than the unit members. (Tape 3) Testimony from the other members of the City bargaining team neither supported nor refuted Ms. Bruskotter's statements on the meeting of July 26. The testimony of the City bargaining team and Ms. Bruskotter's statements contrast sharply with the testimony of the Union's bargaining team. Both Ms. Hardinger and Ms. Lewis testified that Ms. Bruskotter had specifically assured them that no one would get more than 2%--whether union or nonunion. Adams testified that he asked very, very pointed questions and he was continually told that there was no more money for others-- people on the matrix would continue on the matrix. In response to the question "Was there any question in your mind at all--when you left the bargaining table with the T.A. [tentative agreement] that you had assurances that the nonunion employees--the exempt employees who shared this salary matrix traditionally--were not going to get a better deal?" Adams replied, "I've been doing this business for 10 years and if I can't protect myself from the worst case scenario that could happen at the bargaining table I haven't learned very much and there was no question in my mind that when I left that table those exempt employees who we feared so much as getting favorable treatment could have gotten not only favorable treatment but the very proposal we presented and had rejected--I would still be at the bargaining table and not at this hearing." (Tape 6)

All members of the City bargaining team recall Ms. Bruskotter making the statement during negotiations that they were not bargaining for the nonunion employees or that the salaries paid to the nonunion employees was a management decision. Ms. Bruskotter remembers having made the statement that they were not bargaining for the nonunion employees at the second meeting on June 28. She thinks that she may have repeated the statement later but neither she

(Footnote Continued)

5. The MPEA membership turned down the City offer of July 26, and the parties met again on August 2. Wages for nonunion employees were not discussed during this relatively short meeting where the parties tentatively agreed to the following:

Step A	Step B	Step C - M
6 months (probationary) Increased 2%	7% higher than A	Eliminated (employees over step C under former pay plan to receive additional 2%)

The unit ratified this agreement on August 6, 1985 after being assured that this was the pay plan that would be shared by all employees under the pay plan--exempt and non-exempt alike. Adams testified that he did not believe a proposal would have been ratified without these assurances (Tape 6).

The City Commission approved the agreement on August 7, 1985.

6. On August 7, at the same time he took the tentative agreement to the City Commission for approval, City Manager Al Johnson also made a recommendation on wages for the nonunion employees. The City Commission approved both of Johnson's recommendations. The new pay plan for the nonunion employees gives them larger increases than those contained in the agreement with the MPEA bargaining unit. This pay plan is identical to the last proposal made by the union and rejected by the City:

Step A	Step B	Step C
6 months (probationary) Increased 2%	10% higher than A	Eliminated

(Footnote Continued)
nor any other member of the City team can definitely say if or when she did so.

This is a significant gain over the 1984-85 pay plan under which a newly hired employee would receive a 10% wage increase by the end of 18 months of employment. Under this plan a newly hired employee would receive a 10% increase after 6 months of employment. This plan is also significantly more than the negotiated agreement with MPEA under which a newly hired employee would receive a 7% increase after 6 months of employment.

7. City Manager Al Johnson met with the City bargaining team before and after every bargaining session. He testified that he never presumed to have the final say in regard to budgetary items in negotiations. The City Commission set guidelines which he conveyed to the team. He testified that the City team never brought the issue of the nonunion wage to his attention nor did he ever tell the team to tell MPEA it would get the same increase as the exempt employees (Tape 5).

Johnson testified that he made the decision on the pay increase for the exempt employees after the settlement with MPEA and that it was administratively convenient to have both groups of employees on a pay plan with the same structure. In regard to the amount of the increase for exempt employees he said, "in the case of exempt employee we were not in negotiations with those employees--there wasn't a bargaining process going on, these were people who had basically hired on with the City with the understanding they would receive that 5% increment between step increases." The expectation was based on "the pay plan that was in existence when they came to work for the City of Great Falls." "If we were going to modify steps to reflect the new model that had been negotiated with the MPEA we were

basically talking about a 10% differential and so we--what we did was--basically reflect that and immediately in the numbers in the increments for those employees and basically the rationale, for that was that, we didn't have any choice--we weren't bargaining with those people, we weren't negotiating with them that was--that definitely would have been an unfair labor practice--had we unilaterally decided to do something else." (Tape 5)

8. After union ratification and City Commission approval, the agreement was signed by representatives of the City and presented to the union for signature. Judy Hardinger signed the document. Before signing Rosie Lewis heard rumors of the wage increase for the nonunion employees and she called Jim Adams. A period of time elapsed while Adams verified the rumor and determined the feeling of members of the bargaining unit. On September 3, 1985 he wrote the following letter to Cheryl Bruskotter:

> September 3, 1985
>
> Cheryl Bruskotter
> Director, Community Development
> City of Great Falls
> P.O. Box 5021
> Great Falls, MT 59403
>
> Dear Cheryl;
>
> I am returning our contract to you, unsigned. I am doing so because a commitment, made by yourself and your bargaining team, has not been upheld.
>
> If you remember, one of our greatest concerns was that the City would treat those excluded employees, sharing the same salary matrix with us, more favorably. You assured us, in no uncertain terms, that this would not happen. There was a commitment made, at the bargaining table, that those "excluded" employees would receive the same settlement. As you are aware, this has not happened.
>
> To make matters worse, those employees got the very proposal that we submitted and had rejected by the City Council as being too costly! You then came back with a compromise and we agreed on the condition that those excluded employees would

receive the same settlement. Cheryl, someone on your side failed to live up to that commitment.

I have no other choice than to insist that the City replace the pay plan in the contract with the same salary schedule given to excluded employees or MPEA will have to file unfair labor practice charges against the City for not bargaining in good faith. If I have not heard back from you by September 10, 1985, those charges will be filed the following day.

Respectfully submitted,

s/_____
Jim Adams, Director
Field Services

DISCUSSION

ULP 19-85

Central to the determination of whether the City of Great Falls failed to bargain in good faith with MPEA is a determination of whether the union was entitled to information about non-bargaining unit positions, whether the union asked for this information and, if so, how the City responded.

The NLRB and the courts have long since held that unions are entitled to data on nonbargaining unit positions as long as that data is relevant to bargaining issues.[2] In a case where the union was convinced that the alleged greater wage increases granted the nonunit employees would have been an item of great interest among unit employees, the NLRB said,

> Under the circumstances of this case, where the established past practice of Respondent was to maintain a degree of wage parity between nonunit and unit

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[2] Press Democrat Publishing Company v. NLRB, CA 9, 629 F2d 1320, 105 LRRM 3046 (1980); Brown Newspaper Publishing Co., 238 NLRB No. 187, 99 LRRM 1452 (1978); Curtiss-Wright Corp. v. NLRB, 347 F.2d 61, CA 3, 59 LRRM 2433 (1965); Hollywood Brands v. NLRB, CA 5, 54 LRRM 2760 (1963), cert. denied, 377 US 923, 56 LRRM 2095.

> employees of similar skills where the percentage wage increase granted the nonunit employees would be likely viewed by the Union as the floor from which it would make demands and below which it would not settle... the wage data concerning the nonunit personnel assumes probable or potential relevance to the Union's statutory responsibility... Brazos Electric Power Cooperative, 241 NLRB No. 160, CA 5, 615 F2d 1100, 104 LRRM 2123 (1980).

Such is the case here. Historically, the unit and nonunit employees shared the same pay matrix. The relevance of the information requested was attested to by Adams who testified that had it been known that the exempt employees would get a greater increase than the union employees he would still be at the bargaining table--he doubted that the agreement would have been ratified.

Having established that the union was entitled to the information we turn to the next question, did MPEA actually ask for the information on the nonbargaining unit positions and, if so, how did the City respond? In attempting to answer these two questions we find that testimony conflicts and we must make a determination of credibility. "'Credibility' involves more than demeanor; it apprehends the overall evaluation of testimony in the light of its rationality or internal consistency and the manner in which it hangs together with other evidence." Carbo v. U.S., C.A.Cal. 314 F2d 718, 749 (as quoted in Words and Phrases). Thus we must weigh the testimony not just in the light of the demeanor of the witnesses but test it against its inherent probability or improbability, consistency or inconsistency and whether or not it was uncontradicted or contradicted.

Did MPEA ask for the information and, if so, how did the City respond? All witnesses agreed that discussions of the wages of exempt employees took place. The union

witnesses testified that these conversations were initiated by questions from Jim Adams and the City gave specific assurances that the exempt employees would receive no more than the union employees. City Finance Director Tubergen agrees that at least one conversation was initiated by a question from Adams and he responded by saying he knew of no plans to give the nonunion employees more. Ms. Bruskotter agrees that conversations took place but stated they were not initiated by a question nor did she respond with any information--they simply talked about "historics". In addition, she and other members of the City team remember her saying at some point that they were not bargaining for the nonunion employees, or that the salaries paid to the nonunion employees was a management decision.

In answering the questions we must look to the subsequent events and the documentary evidence as well as the oral testimony. The bargaining unit ratified the contract after being assured (at the ratification meeting) that the exempt employees would get no more than they. When the unit found out that, in actual fact, the exempt employees were to receive a larger increase it refused to sign the contract. Adams then wrote to Cheryl Bruskotter: "You assured us, in no uncertain terms, that this would not happen. There was a commitment made, at the bargaining table, that those "excluded" employees would receive the same settlement." (Letter from Adams to Bruskotter, September 3, 1985).

Analyzing the evidence, we find that conversations about the wages to be paid to the exempt employees took place. Ms. Bruskotter was the only witness who testified that the conversation(s) did not include questions from Adams on the wages to be paid exempt employees. Ms. Bruskotter would have us believe these conversations were

merely general--they had no directed beginning and did not result in the exchange of any information. However, experience tells us that conversations at the bargaining table are usually purposeful--they are part of the plan to reach agreement. It seems highly improbable that such a conversation would not begin with a question or a statement requiring an answer. It seems even more improbable that a conversation initiated to gain information would simply trail off with no information being exchanged. It would seem even more improbable that Adams (a seasoned negotiator) would believe that they had been assured "in no uncertain terms...that those 'excluded' employees would receive the same settlement," if Ms. Brueckotter had simply replied to his question that they were not bargaining for nonunit employees or that the wages of the exempt employees was a management decision.

While the memories of both parties were faded by time, the testimony of the union witnesses was consistent, non-contradictory and more probable than that of the City's witnesses. From the testimony and evidence we must conclude that the union specifically asked about the wages for the exempt employees and was given assurances that those employees would receive the same settlement as the MPEA unit. That the information given must be true information goes without saying. Thirty years ago the U.S. Supreme Court spoke to this very point, "Good Faith necessarily requires that claims made by either bargainer should be honest claims." NLRB v. Truitt Mfg. Co., 351 US 149, 38 LRRM 2042 (1956). See Also Eastern Market Beef Processing Corp. 259 NLRB 102, 108 LRRM 1332 (1981) and Penntech Papers Inc., 263 NLRB No. 33, 111 LRRM 1622 (1982) where the NLRB found the employer in violation of the Act for making false

and misleading statements or providing misinformation to the union.

While the NLRB and the Courts have made it clear that a refusal to supply relevant information is a violation of the Act, there is considerably less clarity on the question of whether it is a per se violation or merely evidence of bad faith bargaining.

> The view that Truitt [supra] properly interpreted means that refusal to supply information is only evidence of bad faith, not a per se violation, has been followed in a number of circuit court decisions, though some courts have continued to apply a per se standard.[3]

Cases where an employer has supplied misinformation rather than refusing to supply information at all are rather unusual. While it is clear that parties are required to supply honest information, case law has not established whether the supplying of misinformation is a per se violation or merely evidence of bad faith bargaining. It would appear, however, that supplying misinformation has an even more harmful effect than a refusal to supply information at all. A party refused information acts or does not act knowing that it does not have the information. There is risk involved but the party is aware that the risk is there. The party which is given incorrect information acts

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[3]The Developing Labor Law, ed. Charles J. Morris (Bureau of National Affairs, Washington, D.C. 1983) 2nd ed. pp. 608-609.

See Woodworkers v. NLRB, 263 F2d 483, 43 LRRM 2462 (CA DC, 1959); J.I. Case Co. v. NLRB, 253 F2d 149, 41 LRRM 2679 (CA 7, 1958), but see Curtiss-Wright Corp. v. NLRB, 347 F2d 61, 59 LRRM 2433 (CA 3, 1965), where the court stated that once it is established that information is relevant, for the employer to fail to produce the information on request is a per se refusal to bargain; NLRB v. Fitzgerald Mills, 313 F2d 260, 52 LRRM 2174 (CA 2, 1963), cert. denied 375 US 834, 54 LRRM 2312.

believing that the information supplied is correct. The actions they take, based on the misinformation, will not have the expected result. While a contract may result there will not be true mutual agreement. The reasoned bargaining process, the constructive open discussions leading to mutual agreement envisioned by the Act is made a mockery.[4]

Whether supplying misinformation is a per se violation or merely evidence of bad faith bargaining is perhaps immaterial because, in this case as in most cases, the exchange of information does not occur in a vacuum. In determining the issue of bad faith bargaining the Board of Personnel Appeals, the NLRB and the Courts have adopted a standard whereby each case is judged on the facts in the individual case taking into consideration the "totality of conduct" of the parties.[5]

Closely aligned with the bad faith bargaining/totality of conduct concept is the concept of surface bargaining. Like bad faith bargaining, surface bargaining is a multi-faceted concept which has been found to include such actions as (1) the employer's offer merely reiterating existing practices and unduly delaying the submission of a written counter proposal,[6] (2) dilatory tactics and an

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[4] See H.K. Porter Co., 397 US 99, 73 LRRM 2561 (1970) for a discussion of the intent of the National Labor Relations Act.

[5] NLRB v. Virginia Electric & Power Co., 314 US 469, 9 LRRM 405 (1941); Rhodes-Holland Chevrolet Co., 146 NLRB No. 156, 56 LRRM 1058 (1964). Joy Silk Mills, Inc. v. NLRB, 185 F2d 732, 27 LRRM 2012, (CA DC, 1950); Teamsters Local 2 v. Silver Bow County Commissioners (ULP 4-76; Mountain View and Pine Hills Education Assoc. v. State of Montana Personnel Division (ULP 33-81).

[6] Irvington Motors, Inc. 147 NLRB 565, 56 LRRM 1257 (1964), enforced per curiam, 343 F2d 759, 58 LRRM 2916 (CA 3 1965).

apparent intent to reach an impasse,[7] and (3) failure to designate an agent with sufficient authority.[8]

In examining the bargaining situation as a whole in this case we find that the City bargaining team was composed of individuals whose main function was community development, finance or the library--individuals who were not schooled in the intricacies of labor law. These bargainers seem to have been unaware of their duty to supply relevant information on nonbargaining unit positions and never relayed the union's question to the City Manager (Finding of Fact #7). Not aware of their legal obligation to supply the information or the serious nature of the request it appears that they simply gave an answer based on their knowledge of past practice--an answer which turned out to be untrue. In addition to their lack of knowledge of a complex process the City team appeared to be hampered by too little authority. For example, by July 12, the City team had been given the authority by the City Commission to raise their offer to 1¼% and at the end of the meeting the City team took the union counter proposal back to their "superiors" (it was this proposal that was subsequently given to the nonunion employees). (Finding of Fact #3 and #4). The offer made by the team on July 26 was made on the authority of the City Manager, who Ms. Bruskotter believed, had spoken to the City Commission (Finding of Fact #4). While the City Commission had the right to ratify the agreement, it is not clear that

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[7] Hilton Mobile Homes, 155 NLRB 873, 60 LRRM 1411 (1965), modified 387 F2d 7, 67 LRRM 2140 (CA 8, 1967).

[8] NLRB v. Fitzgerald Mills, 313 F2d 260, 52 LRRM 2174 (CA 2, 1963); Billups Western Petroleum Co., 169 NLRB No. 147, 67 LRRM 1328, enforced per curiam 416 F2d 1333, 72 LRRM 2687 (CA 5, 1969).

they were not more actively involved in the bargaining. From the evidence on the record, it appears that either the City Commission or the City Manager were directing the actual offers, as well as the timing of the offers, made by the City team at the bargaining table. The function of the City bargaining team was to go through the motions of bargaining, relaying offers to the Union as directed by higher authority. Failing to give negotiators sufficient authority to carry on meaningful bargaining is considered by the NLRB and the courts as factors in surface or bad faith bargaining. In Billups Western Petroleum Co.,[9] the NLRB found that "Respondent's intention to engage in no more than surface bargaining was further shown by the fact that its bargaining representatives had no meaningful bargaining authority, making them little more than a conduit for communications to and from its president." In NLRB v. Fitzgerald Mills, the fact that the employer gave its negotiators only limited authority which resulted in delays for referring proposals back to the employer's principals was considered a factor in a finding of bad faith bargaining.[10] Such was the case in the City of Great Falls. The bargaining team for the City of Great Falls did not have the authority required by the Act.

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[9] Supra.

[10] NLRB v. Fitzgerald Mills, supra; see also Bonham Cotton Mills, Inc., 121 NLRB 1235, 42 LRRM 1542 (1958) enforced per curiam, 289 F2d 903, 48 LRRM 2086, CA 5, 1961; Penntech Papers, Inc., 263 NLRB No. 22, 111 LRRM 1622 (1982); National Amusements, Inc., 155 NLRB 1200, 60 LRRM 1485 (1965); NLRB v. Herman Sausage Co., 122 NLRB 168, 43 LRRM 1090 (1958) Lower Flathead Education Assoc. v. Charlo School Dist. No. 7, (ULP 14-76); Mountain View and Pine Hills Education Assoc. v. State of Montana Personnel Division (ULP 33-81).

In summary, we find that the City of Great Falls is in violation of two requirements of the Act. First, it failed to invest its bargaining team with meaningful bargaining authority. Secondly, it gave the union incorrect information. This incorrect information led the union to ratify an agreement which would not have been made except for the incorrect information supplied by the City. Had the City of Great Falls used a bargaining team with real knowledge and understanding of the collective bargaining process and invested it with sufficient authority at the bargaining table this situation would not have occurred. As it was, because of the false assurances given to the MPEA team an "agreement" was reached that was not a true meeting of the minds.[11] The totality of the circumstances leads to the conclusion that the City of Great Falls failed to bargain in good faith.

CONCLUSIONS OF LAW

The City of Great Falls has failed to bargain in good faith with the Montana Public Employees Association and by so doing is in violation of 39-31-401(5) and 39-31-305 MCA.

DISCUSSION

ULP 20-85

It has long been established that the parties must execute the collective bargaining agreement which was orally agreed to at the bargaining table. Failure to execute the agreement is a failure to bargain in good faith.[12] However,

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[11] Orion Tool, Die and Machine Co., 195 NLRB No. 194, 79 LRRM 1636 (1972).

[12] H. J. Heinz v. NLRB, 311 U.S. 514, 7 LRRM 291 (1941); NLRB v. Strong, 393 U.S. 357, 70 LRRM 2100 (1969).

as is frequently the case, there are exceptions to the rule. The NLRB has not found a violation when an agreement was reached after the employer's negotiator exceeded his authority in agreeing to the crucial issue,[13] when a provision of the agreement was illegal,[14] or would require illegal conduct on the part of the employer.[15] Failure to execute was not found a violation when the agreement was based on a promise by the union--a promise which the union was unable to fulfill.[16] Failure to sign an agreement reached as a result of the employer's unfair labor practice was not a violation.[17] Finally, no violation was found when the employer refused to execute an agreement which had been arrived at through trickery. In Industrial Engineering Co., the Board found that under such circumstances the written agreement did not constitute a consciously arrived at understanding.[18] In Taylor Chevrolet the Board again found an employer not in violation of the Act because it had never conciously agreed to a provision in the contract and consequently there was never the meeting of minds required by the Act.[19]

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[13] NLRB v. Advanced Business Forms Corp., No. 72-1332, CA 2, 82 LRRM 2161 (1973).

[14] Stein Printing Company, 204 NLRB No. 2, 83 LRRM 1580 (1973).

[15] Stackhouse Oldsmobile v. NLRB, No. 15308, CA 6, 55 LRRM 2895.

[16] Kent Engineering, Inc., 180 NLRB No. 17, 72 LRRM 1639 (1969).

[17] Dixie Sand & Gravel Co., 231 NLRB 6, 95 LRRM 1568 (1977).

[18] 173 NLRB No. 18, 69 LRRM 1227 (1968)

[19] 199 NLRB No. 176, 81 LRRM 1405 (1972)

In this case as in those cited above, there was not a meeting of the minds. While the parties reached an "agreement", that "agreement" was based on the incorrect information supplied to the union by the City. The bad faith bargaining engaged in by the City led the union to make an agreement that would not have been made absent the incorrect information. There was no true meeting of the minds between the two parties and absent a meeting of minds the Act does not require MPEA to execute the "agreement".

CONCLUSIONS OF LAW

The Montana Public Employees Association is not in violation of 39-31-402(2) MCA.

RECOMMENDED ORDER

The City of Great Falls is ordered to cease and desist from bargaining in bad faith with the Montana Public Employees Association and specifically to:

1. Negotiate an agreement with the Montana Public Employees Association to replace the unexecuted 1985-86 agreement.
2. Appoint a bargaining committee with the authority to bargain in good faith with the union. The City is to provide the bargaining team with written guidelines setting forth their authority and limits. Any amendments to these guidelines and limits must also be in writing.
3. Until an agreement is reached with MPEA, provide the Board of Personnel Appeals with written notification of the date, time and duration of all bargaining sessions.

and, post, on bulletin boards where employee information is usually posted, the following notice. This notice is to be posted in each and every workplace where a member of the MPEA unit works.

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NOTICE

THE MONTANA BOARD OF PERSONNEL APPEALS HAS DETERMINED THAT THE CITY OF GREAT FALLS HAS BARGAINED IN BAD FAITH WITH THE MONTANA PUBLIC EMPLOYEES ASSOCIATION IN VIOLATION OF 39-31-401(5) MCA. The city has been ordered to:

1. Negotiate an agreement with the Montana Public Employees Association to replace the unexecuted 1985-86 agreement.
2. Appoint a bargaining committee with the authority and knowledge to bargain in good faith with the union. The City is to provide the bargaining team with written guidelines setting forth their authority and limits. Any amendments to these guidelines and limits must also be in writing.
3. Until an agreement is reached with MPEA, provide the Board of Personnel Appeals with written notification of the date, time and duration of all bargaining sessions.

DATED this _____ day of _____, 1986

CITY OF GREAT FALLS

By:_____
City Manager

This notice shall remain posted for a period of 60 consecutive days from the date of posting and shall not be altered, defaced or covered.

Questions about this notice or compliance therewith may be directed to the Board of Personnel Appeals, P.O. Box 1728, Helena, Montana 59624.

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DATED this 28th day of July, 1986.

BOARD OF PERSONNEL APPEALS

By Linda Skaar
LINDA SKAAR
Hearing Examiner

NOTICE

Written exceptions to these Findings of Fact, Conclusions of Law and Recommended Order may be filed within twenty days. If no exceptions are filed with the Board of Personnel Appeals within that time, the Recommended Order shall become the Final Order of the Board. Exceptions shall be addressed to the Board of Personnel Appeals, P.O. Box 1728, Helena, MT 59624.

CERTIFICATE OF MAILING

I, Linda Skaar, do certify that a true and correct copy of this document was mailed to the following on the 28th day of July, 1986.

David V. Gliko
City Attorney
City of Great Falls
P.O. Box 5021
Great Falls, MT 59403

Montana Public Employees Association
P.O. Box 5600
Helena, MT 59604

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